



Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade the Shares of the Breakwave Tanker Shipping ETF  
December 8, 2022.

On September 13, 2022, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares (“Shares”) of the Breakwave Tanker Shipping ETF (“Fund”). The proposed rule change was published for comment in the Federal Register on September 27, 2022.<sup>3</sup>

On November 2, 2022, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 95853 (Sept. 21, 2022), 87 FR 58552 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 96213, 87 FR 67513 (Nov. 8, 2022). The Commission designated December 26, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

I. Summary of the Exchange’s Proposal

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts on the Exchange. The Fund will be a series of ETF Managers Group Commodity Trust I (“Trust”),<sup>8</sup> and the Fund and the Trust will be managed and controlled by their sponsor and investment manager, ETF Managers Capital LLC (“Sponsor”).<sup>9</sup>

According to the Exchange, the Fund’s investment objective will be to provide investors with exposure to the daily change in the price of tanker freight futures, before expenses and liabilities of the Fund, by tracking the performance of a portfolio (“Benchmark Portfolio”) consisting of the nearest calendar quarter of futures contracts on specified indexes (individually, “Reference Index”) that measure prices for shipping crude oil (“Freight Futures”).<sup>10</sup> Each Reference Index is published each U.K. business day by the London-based Baltic Exchange<sup>11</sup>

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<sup>7</sup> See Notice, supra note 3.

<sup>8</sup> The Exchange states that, on July 1, 2022, the Trust submitted to the Commission on a confidential basis its draft registration statement on Form S-1 (“Registration Statement”) under the Securities Act of 1933. See Notice, 87 FR at 58552 n.5.

<sup>9</sup> The Sponsor is registered with the Commodity Futures Trading Commission (“CFTC”) as a commodity pool operator and is a member of the National Futures Association. Breakwave Advisors LLC (“Breakwave”) is registered as a commodity trading advisor with the CFTC and will serve as the Fund’s commodity trading advisor. ETFMG Financial LLC will be the Fund’s distributor, and US Bancorp Fund Services LLC will be the Fund’s administrator and transfer agent (“Administrator” and “Transfer Agent”). See id. at 58552-53.

<sup>10</sup> See id. at 58553. According to the Exchange, Freight Futures are primarily traded through broker members of the Forward Freight Agreement Brokers Association (“FFABA”). Members of the FFABA must be members of the Baltic Exchange and must be regulated by the Financial Conduct Authority if resident in the U.K., or if not resident in the U.K., by an equivalent body if required by the authorities in the jurisdiction. See id. at 58555 n.10. Freight Futures are quoted in U.S. dollars per metric ton, with a minimum lot size of 1,000 metric tons. One lot represents freight costs to transport in U.S. dollars. The nominal value of a contract is simply the product of lots and Freight Futures prices. See id. at 58555.

<sup>11</sup> The Baltic Exchange, which is a wholly-owned subsidiary of the Singapore Exchange, is a membership organization and an independent source of maritime market information for the trading and settlement of physical and derivative shipping contracts. See id. at 58553 n.6.

and measures the charter rate for shipping crude oil in a specific size category of cargo ship and for a specific route. The two Reference Indexes are: (1) the TD3C Index: Persian Gulf to China 270,000mt cargo (Very Large Crude Carrier or VLCC tankers); and (2) the TD20 Index: West Africa to Europe, 130,000mt cargo (Suezmax tankers).<sup>12</sup> The value of each of the TD3C Index and TD20 Index is disseminated daily at 4:00 p.m., London Time by the Baltic Exchange. Such Reference Index information also is widely disseminated by Reuters, Bloomberg, and/or other major market data vendors.<sup>13</sup>

The Fund will seek to achieve its objective by purchasing Freight Futures.<sup>14</sup> Freight Futures reflect market expectations for the future cost of transporting crude oil. The Fund also may hold exchange-traded options on Freight Futures. The principal markets for Freight Futures are ICE Futures Europe (“ICE”) and the Chicago Mercantile Exchange (“CME”). The applicable exchange acts as a counterparty for each member for clearing purposes. The Fund’s investments in Freight Futures will be cleared by ICE and/or CME.<sup>15</sup> According to the Exchange, the

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<sup>12</sup> See id. at 58553. The Reference Indexes are published by the Baltic Exchange’s subsidiary company, Baltic Exchange Information Services Ltd (“Baltic”), which publishes a wide range of market reports, fixture lists and market rate indicators on a daily and (in some cases) weekly basis. The Baltic indices, which include the Reference Indexes, are an assessment of the price of moving the major raw materials by sea. The indices are based on assessments of the cost of transporting various bulk cargoes, both wet (e.g., crude oil and oil products) and dry (e.g., coal and iron ore), made by leading shipbroking houses located around the world on a per ton and daily hire basis. The information is collated and published by the Baltic Exchange. Procedures relating to administration of the Baltic indices are set forth in “The Baltic Exchange, Guide to Market Benchmarks” November 2016, including production methods, calculation, confidentiality and transparency, duties of panelists, code of conduct, audits, and quality control. See id. at 58553 n.7.

<sup>13</sup> See id. at 58553.

<sup>14</sup> Generally, Freight Futures trade from approximately 3:00 a.m. Eastern Time (“E.T.”) to approximately 1:00 p.m. E.T. The great majority of trading volume occurs during London business hours, from approximately 4:00 a.m. E.T. time to approximately 12:00 p.m. E.T. Some limited trading takes place during Asian business hours as well (12:00 a.m. to 3:00 a.m. E.T.). The final closing prices for settlement are published daily around 12:30 p.m. E.T. Final cash settlement occurs the first business day following the expiry day. See id. at 58555.

<sup>15</sup> See id. CME and ICE are members of the Intermarket Surveillance Group (“ISG”). See id. at 58553 n.8.

liquidity of tanker Freight Futures (clean and dirty) has been increasing, in lot terms, over the last five years. For example, in 2021, approximately 560 thousand lots in Freight Futures traded. As of 2022, open interest in Freight Futures stood at approximately 145,000 lots across all asset classes representing an estimated value of more than \$2 billion. Major market participants in the tanker Freight Futures market include commodity producers, commodity users, commodity trading houses, ship operators, major banks, investment funds, and independent ship owners.<sup>16</sup>

The Fund's portfolio will be traded with a view to reflecting the performance of the Benchmark Portfolio, whether the Benchmark Portfolio is rising, falling, or flat over any particular period.<sup>17</sup> The Benchmark Portfolio, which is maintained by Breakwave and will be rebalanced annually, will hold long positions in Freight Futures corresponding to the TD3C Index and TD20 Index.<sup>18</sup> The Benchmark Portfolio's initial allocation will be approximately 90% TD3C contracts and 10% TD20 contracts, based on contract value, not number of lots.<sup>19</sup> Given each asset's individual price movements during the year, such percentages might deviate from the targeted allocation. The Benchmark Portfolio will consist of positions in the three-month strip of the nearest calendar quarter of Freight Futures and roll them constantly to the next calendar quarter. The four-calendar quarters are January, February, and March (Q1), April, May, and June (Q2), July, August, and September (Q3), and October, November, and December (Q4).<sup>20</sup> The Benchmark Portfolio will hold all positions to maturity and settle them in cash. During any given calendar quarter, the Benchmark Portfolio will progressively increase its position to the next calendar quarter three-month strip, thus maintaining constant long exposure to the Freight Futures market as positions mature. The Fund maintains the right to invest in other maturities of Freight Futures if such strategy is deemed necessary. According to the Exchange,

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<sup>16</sup> See id. at 58556.

<sup>17</sup> See id. at 58553.

<sup>18</sup> See id. at 58554.

<sup>19</sup> See id.

<sup>20</sup> See id.

the Benchmark Portfolio will not include, and the Fund will not invest in swaps, non-cleared freight forwards, or other over-the-counter derivative instruments that are not cleared through exchanges or clearing houses.<sup>21</sup>

To track the Benchmark Portfolio, the Fund will attempt to roll positions in the nearby calendar quarter, on a pro rata basis.<sup>22</sup> For example, if the Fund was currently holding the Q1 calendar quarter comprising the January, February and March monthly contracts, each week in the month of February, the Fund will attempt to purchase Q2 contracts in an amount equal to approximately one quarter of the expiring February positions. As a result, by the end of February, the Fund would have rolled the February position to Q2 freight contracts, leaving the Fund with March and Q2 contracts. At the end of March, the Fund will have completed the roll and will then hold only Q2 exposure comprising April, May, and June monthly contracts. Since Freight Futures contracts are cash settled, the Fund need not close out of existing contracts. Rather, it will hold such contracts to expiration and apply the above methodology in order to acquire the nearby calendar contract.<sup>23</sup>

To maintain the correlation between the Fund and the change in the Benchmark Portfolio, the Sponsor may adjust the Fund's portfolio of investments on a daily basis in response to creation and redemption orders or otherwise as required. The Sponsor anticipates that the Fund's Freight Futures positions will be held to expiration and settle in cash against the respective Reference Index as published by the Baltic Exchange and ICE or CME.<sup>24</sup>

When establishing positions in Freight Futures, the Fund will be required to deposit initial margin with a value of approximately 10% to 40% of the notional value of each Freight Futures position at the time it is established.<sup>25</sup> These margin requirements are established and

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<sup>21</sup> See id.

<sup>22</sup> See id.

<sup>23</sup> See id.

<sup>24</sup> See id. at 58553.

<sup>25</sup> See id.

subject to change from time to time by the relevant exchanges, clearing houses, or the Fund's futures commission merchant ("FCM"). On a daily basis, the Fund will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its overall futures positions. Any assets not required to be posted as margin with the FCM will be held at the Fund's custodian in cash or cash equivalents.<sup>26</sup> The Fund will place purchase orders for Freight Futures with an execution broker. The broker will identify a selling counterparty and, simultaneously with the completion of the transaction, will submit the block traded Freight Futures to the relevant exchange or clearing house for clearing, thereby completing and creating a cleared futures transaction. If the exchange or clearing house does not accept the transaction for any reason, the transaction will be considered null and void and of no legal effect.<sup>27</sup>

The Exchange represents that not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures will consist of Freight Futures and exchange-traded options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have in place a comprehensive surveillance sharing agreement.<sup>28</sup>

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEARCA-2022-61 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>29</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the

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<sup>26</sup> The Fund will hold cash or cash equivalents, such as U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities for direct investment or as collateral for the U.S. Treasuries and for other liquidity purposes, and to meet redemptions that may be necessary on an ongoing basis. See id. at 58553 n.9.

<sup>27</sup> See id. at 58553.

<sup>28</sup> See id. at 58553-54.

<sup>29</sup> 15 U.S.C. 78s(b)(2)(B).

proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>30</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."<sup>31</sup>

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>32</sup> in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

- The Exchange asserts that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200-E.<sup>33</sup> What are commenters' views on whether the proposed Fund and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices?

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<sup>30</sup> Id.

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> See Notice, supra note 3.

<sup>33</sup> See Notice, 87 FR at 58558.

- According to the Exchange, the liquidity of tanker Freight Futures (clean and dirty) has been increasing, in lot terms, over the last five years.<sup>34</sup> What are commenters' views on the Exchange's assertions regarding the increase in liquidity of Freight Futures and the data supporting such assertions?

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>35</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>34</sup> See *id.* at 58556.

<sup>35</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2022-61 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2022-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEARCA-2022-61 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>36</sup> 17 CFR 200.30-3(a)(57).